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2004 MAY 28 P 2:37

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

U.S. DISTRICT COURT  
DISTRICT OF MASS.

FRANK QUAGLIA,	)	CIVIL ACTION
	)	
Plaintiff,	)	NO. 04-10460-RWZ
	)	
v.	)	<b>PLAINTIFF'S SUPPLEMENTAL</b>
	)	<b>POINTS AND AUTHORITIES</b>
	)	<b>REGARDING JOINT Fed.R.Civ.P.</b>
BRAVO NETWORKS, NATIONAL	)	<b>26(f) REPORT</b>
BROADCASTING COMPANY, INC.,	)	
doing business as NBC; RAINBOW	)	[L.R. 16.1(d)]
MEDIA HOLDINGS, INC., and DOES 1-	)	
10.	)	
	)	<u>Scheduling Conference</u> : June 2, 2004
Defendants.	)	Time: 2:30 p.m.
	)	Location: Courtroom No. 12, 5 <sup>th</sup> Floor
	)	
	)	Honorable Rya W. Zobel

Pursuant to the Court's Notice of Scheduling Conference, counsel for Plaintiff offers the following additional statement.

**II. DISCOVERY PLAN**

Defendants have essentially proposed that all discovery be stayed except as to "substantial similarity" in a copyright context. Doing so would thwart one of the best arguments Quaglia has, to wit: that "when access is proven, the required degree of similarity becomes somewhat less than it would have been in the absence of that proof." Nimmer on Copyright, §13.03[D], pp. 13-78 to 13-79, citing at fn.


197, inter alia, *Sid & Marty Kroft Television Prods., Inc. v. McDonald's Corp*, 562 F. 2d 1157 (9<sup>th</sup> Cir. 1977), *Steinberg v. Columbia Pictures Industries., Inc.*, 738 F. 2d 548 (2d Cir. 1984) and numerous other cases.

Quaglia believes that showing access will be relatively easy, thus making the “substantial similarity” argument that much more powerful. To deny Quaglia the opportunity to do discovery on access ties one hand behind his back and gives defendants an unfair advantage.

Respectfully submitted,

FRANK QUAGLIA,

By his attorneys,

  
CHRIS WINTON HENDERSON  
(BBO No. 655321)  
57 Wharf Street  
Suite No. 3A  
Salem, Massachusetts 01970  
(978) 741-4646  
(978) 740-8880 (fax)

***Of Counsel***

Neville L. Johnson  
Douglas L. Johnson  
JOHNSON & RISHWAIN LLP  
12121 Wilshire Blvd.  
Suite 1201  
Los Angeles, California 90025-1175  
(310) 826-2410  
(310) 826-5450 (fax)

Date: May 28, 2004